Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Cable Television Consumer Protection and Competition Act of 1992	)	MM Docket No. 92-259
	)	
	)	
Broadcast Signal Carriage Issues	)	

COMMENTS OF AFLAC BROADCAST PARTNERS

AFLAC Broadcast Partners ("AFLAC")[1] hereby submits its comments in response to the Commission's Notice of Proposed Rule Making ("NPRM") in this proceeding, released November 19, 1992. In its initial comments, AFLAC wishes to focus on one critically important factor that it believes must be taken into account by the Commission in setting standards for the exercise of must-carry and retransmission rights: the need to protect established audience viewing patterns and avoid disrupting existing local television service.

In enacting the Cable Television Consumer Protection and Competition Act of 1992 ("Cable Act"), Congress specifically recognized the importance of maintaining and fostering local

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[1] AFLAC Broadcast Partners is the licensee of the following network affiliated commercial television stations: KFVS-TV, Cape Girardeau, Missouri; KWWL(TV), Waterloo, Iowa; WAFB(TV), Baton Rouge, Louisiana; WAFF(TV), Huntsville, Alabama; ; WTOC(TV), Savannah, Georgia; and WTVM(TV), Columbus, Georgia. In addition, the general partner of AFLAC Broadcast Partners, American Family Broadcast Group, Inc., is the sole owner of WITN-TV, Inc., the licensee of WITN-TV, Washington, North Carolina.

television service. Among the Congressional findings contained in Section 2(a) of the Act are the following:

> (10) A primary objective and benefit of our Nation's system of regulation of television broadcasting is the local origination of programming. There is a substantial governmental interest in ensuring its continuation. . . .
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> (11) Broadcast television stations continue to be an important source of local news and public affairs programming and other local broadcast services critical to an informed electorate. . . . [and]
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> (16) As a result of the economic incentive that cable systems have to delete, reposition, or not carry local broadcast signals, coupled with the absence of a requirement that such systems carry local broadcast signals, the economic viability of free local broadcast television and its ability to originate quality local programming will be seriously jeopardized.

Thus, the preservation of local television service is at the heart of the Cable Act. In adopting implementing rules for the must-carry and retransmission provisions of the Act, the Commission necessarily must take into account this fundamental purpose.

Under Section 614 of the Cable Act, cable television systems are required to carry local commercial television stations and qualified low power stations. Section 614(h)(1)(A) of the Act defines a "local commercial television station" as any full power commercial television broadcast station licensed by the Commission <u>that is located in the same television market as the cable system</u>. Accordingly, the question of what constitutes "the same television market" is central to the determination of mandatory carriage rights.

Before addressing that question, however, it is first necessary to determine the location of the cable system. AFLAC strongly believes that the location of the cable system should be based upon the cable service area, rather than the location of the principal headend. Thus, a cable system should be considered to be located in any county in which it delivers service and its carriage obligations should be determined with reference to that county. Such an approach is completely consistent with Congress's expressed concern to preserve local television service. In contrast, particularly with a large, technically integrated cable system, defining the cable system's location as the principal headend, which might be a considerable distance from any particular county served by that system, would be at odds with that purpose by tending to exclude television signals which viewers of the cable system in a particular area would, in fact, perceive as local.

Once the location of the cable system is defined, the next step is to articulate the boundaries of the "television market." Through its reference to Section 73.3555(d)(3)(i) of the Commission's Rules, Section 614(h)(1)(C) of the Act effectively defines television market as the Arbitron ADI. However, the Act specifically confers upon the Commission the authority, in response to a written request, to add or exclude additional communities to the television market "to better effectuate the purposes of this section" and specifically states that, in considering such requests, "the Commission may determine that particular communities are part of more than one television

market." The question is who should be permitted to make such a request for the modification of a television market and what standards should be applied in evaluating that request.

AFLAC believes that only broadcast stations should be permitted to make market modification requests. Television stations are far more likely than cable systems to have pertinent information with respect to the four factors identified by Congress as relevant to the Commission's evaluation of market modification requests; each of those factors relates directly to local television service and coverage. See discussion below. Moreover, allowing cable systems to initiate such requests invites potential abuse by cable systems in an attempt to gerrymander markets and thereby avoid carriage obligations of stations that have a significant viewership in their area. Limiting such requests to those made by broadcast stations will discourage such possible abuse of the Commission's processes while not depriving the Commission of valuable input from cable systems; cable systems still will be able to submit comments in any such market modification proceeding and thereby make their views known to the Commission.

Several factors to be used in evaluating such market modification requests are set forth in Section 614(h)(1)(C)(ii) of the Act. These include:

> (I) whether the station, or other stations located in the same area, have been historically carried on the cable system or systems within such community;
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> (II) whether the television station provides coverage or other local service to such community;

> (III) whether any other television station that is eligible to be carried by a cable system in such community in fulfillment of the requirements of this section provides news coverage of issues of concern to such community or provides carriage or coverage of sporting and other events of interest to the community; and
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> (IV) evidence of viewing patterns in cable and noncable households within the areas served by the cable system or systems in such community.

The common principal among these various factors, and the one which Congress directed the Commission to "afford particular attention" is the "value of localism." AFLAC agrees with and supports that Congressional directive. In so doing, Congress specifically recognized the need to avoid disrupting existing viewing patterns and to protect local broadcast television service.

In response to the Commission's specific inquiry about the possible relevance of "significantly viewed" signals (see NPRM at ¶ 20, n.22), AFLAC believes that, while "significantly viewed" status may be indicative of historic viewing patterns, the Commission should not limit its inquiry to whether or not a station has such status or to other measures of off-air viewing. Instead, the Commission should look at the total viewership of a station in a particular area, whether off-air or cable. The reason for this is that neither off-air or cable viewership by itself necessarily is an accurate reflection of the viewership of a station in a particular area. For example, a station that has been declared "significantly viewed" by the FCC may well have a diminished off-air audience but high cable viewership. Conversely, a station that does not have "significantly viewed"

status may have a significant number of off-air viewers but may not be carried, or may have been dropped from, the local cable system. Only by considering both cable and off-air viewership (in combination with the other factors set forth in the Cable Act) will the Commission be able to discern the historic viewing patterns and trends in that area and determine whether the station is providing truly local service.

As the Commission noted in the NPRM, ADIs change from year to year. However, AFLAC believes that it would be extremely disruptive for television stations, cable systems, and the viewing audience for the Commission's market definitions to change on an annual basis.[2] This is particularly true in light of the fact that station elections of must-carry or retransmission status will take place every three years. Accordingly, AFLAC proposes that the television market as defined by the Commission remain in effect for a three-year period to coincide with the dates on which stations must elect must-carry or retransmission status. This will provide all parties with reasonable certainty in the definition of the applicable markets while, at the same time, offering the opportunity for periodic revision to adjust to changing viewing patterns.

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[2] For example, if, as a result of such a market change, a station changed from local to nonlocal in a particular county, the station would lose its entitlement to assert must-carry rights. Presumably, this would require stations carried by virtue of must-carry rights to negotiate carriage based on retransmission consent. If such negotiations were unsuccessful, the stations would be dropped from the cable system, thus disrupting service to local viewers.

One of the most common changes in ADIs is the addition and deletion of "swing counties" at the edge of the ADI. Such areas typically swing back and forth between one ADI and an adjoining ADI based upon relatively slight changes in viewing patterns. In the case of such "swing counties," it may not make sense to lock them into one market or the other. Instead, in appropriate cases, the Commission should utilize the discretion conferred upon it by the Cable Act to "determine that particular communities are part of more than one television market." This will reduce the need for the Commission to reexamine its market determinations and will avoid the potential disruption to audience viewing patterns that would be entailed by assigning such areas exclusively to a single market.

However, once the relevant television market has been defined, not all stations within that geographic area are given must-carry rights under the Act.[3] Stations that are considered "distant signals" for copyright purposes and which decline to indemnify cable systems for increased copyright liability resulting from that carriage are excluded as are stations that do not deliver to the principal headend a signal of a specified signal strength. In that regard, the Commission has asked whether it is sufficient to simply require that good engineering practices be employed in the associated signal reception process

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[3] This may be particularly true in the case of "swing counties" -- especially to the extent that they are given dual market identification. In such cases, it will be necessary to specify criteria that distinguish between those stations that provide truly local service to such areas and those that do not. An objective measurement of signal strength, as discussed below, may be one such factor.

and what, if any, definitions need to be included regarding how the signal strengths are to be measured.

AFLAC believes that it is not sufficient only to specify that good engineering practices be used. In order to assist in resolving disputes and reduce the potential for abuse, a clear and definite standard is required. Thus, the Commission should specify in reference to whatever antenna is utilized by the cable system, that a certain level of microvolts of signal strength delivered off-air by the station's main channel transmitter should be required in order for the television station to be treated as "local."

A question related to the issue of market definition is the review of the list of markets in Section 76.51 that was mandated by Congress. This list of the top 100 television markets is based on data that is over 20 years old. As the Commission pointed out in its NPRM, updating this list to correspond to the current Arbitron ranking would entail significant revisions, including dropping 14 markets in the original list that no longer are ranked in the top 100. If Section 76.51 continues to list only the top 100 markets then stations in hyphenated markets within those 14 will lose the benefits of that hyphenation with a potential and adverse impact upon copyright protection as well as upon territorial and syndicated exclusivity rights and network nonduplication protection. Such changes might well result in deletion of the signal from some cable systems, thus disrupting existing viewership patterns contrary to the Congressional intent.

Accordingly, to the extent that the list is updated, AFLAC urges the Commission to list all markets, not just those in the top 100. This will help minimize the adverse impact on viewers of a change in market ranking.

There is one final issue on which AFLAC would like to address in these initial comments. AFLAC believes that it is extremely important that cable systems be required to affirmatively notify subscribers when they delete signals of commercial television stations that now are being carried. The Act imposes such a requirement for noncommercial educational stations and AFLAC believes that the purposes of the Act strongly support the adoption of a similar requirement for commercial stations. AFLAC believes that the Act's requirement that commercial stations be notified prior to deletion may not be enough to protect the Congressionally recognized interests of viewers for continued access to preferred sources of local news and entertainment programming. Indeed, it is the collective power of informed viewers in expressing their wishes that, in AFLAC's experience, is the most effective in preventing cable systems from abusing their monopoly power through the unwarranted (and sometimes retaliatory) decision to drop a widely viewed local television station. By requiring cable systems to bear the affirmative responsibility for notifying their subscribers of any such decision to delete a local station, the Commission will ensure that viewers have sufficient and timely information and the opportunity to effectively express their concerns to the local cable system.

In addition, AFLAC believes that cable systems also should be required to notify the governing municipality or franchise authority of any such deletion. This will assist those entities in their oversight of the cable system's operation under the new Cable Act and aid in their review of the cable system's performance measured against the promises made during the franchising process.

CONCLUSION

AFLAC commends the Commission for its timely and comprehensive efforts to implement the 1992 Cable Act. In so doing, AFLAC urges the Commission to adopt implementing rules consistent with Congress's desire to avoid disrupting historical television viewing patterns and that recognize and support the important role played by local television broadcasters.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, John Riley, certify that I have this 4th day of January, 1993, sent by hand-delivery, a copy of the foregoing Comments of AFLAC Broadcast Partners to:

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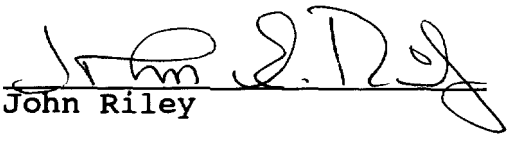

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